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DIAMOND MCCARTHY LLP
 2 909 Fannin, Suite 1500
 Houston, Texas 77010
 Telephone (713) 333-5100
 Facsimile (713) 333-5199

3 Stephen T. Loden, TX Bar No. 24002489 (*pro hac vice*)
 4 Email: myoder@diamondmccarthy.com
 Jacob J. Roberts, TX Bar No. 24065982 (*pro hac vice*)
 Email: jroberts@diamondmccarthy.com

5 Special Litigation Counsel for the
 USACM Liquidating Trust

LEWIS AND ROCA LLP
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169-5996
 Telephone (702) 949-8320
 Facsimile (702) 949-8321

Rob Charles, NV State Bar No. 006593
 Email: rcharles@rlaw.com

Counsel for the USACM Liquidating Trust

6 **UNITED STATES BANKRUPTCY COURT**
 7 **DISTRICT OF NEVADA**

8 In re:
 9 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case Nos.:
 BK-S-06-10725-LBR
 BK-S-06-10726-LBR
 BK-S-06-10727-LBR
 BK-S-06-10728-LBR
 BK-S-06-10729-LBR

10 In re:
 11 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

JOINTLY ADMINISTERED
 Chapter 11 Cases

12 In re:
 13 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,

Judge Linda B. Riegle

14 In re:
 15 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

16 In re:
 17 USA SECURITIES, LLC,
 Debtor.

STATUS REPORT

18 Affects:
 19 All Debtors
 USA Commercial Mortgage Company
 USA Capital Realty Advisors, LLC
 USA Capital Diversified Trust Deed Fund, LLC
 USA Capital First Trust Deed Fund, LLC
 USA Securities, LLC

23 This status report is filed by counsel for the USACM Liquidating Trust (the "USACM
 24 Trust") in response to several issues raised by the Court during the status hearings held on July
 25 26, 2011 in Adversary 08-1119 and Adversary 08-1124 (the "Status Hearings").
 26

1 **Adversary No. 08-01119 – USACM Liquidating Trust v. Russell**

2 During the Status Hearings, the Court raised the issue that the Stipulated Judgment signed
 3 by the Court on July 14, 2011 [Docket No. 78] in this matter was only entered against Defendant
 4 Robert A. Russell and did not address the other defendants.

5 Under the terms of the Settlement Agreement approved by the Court on October 8, 2009
 6 [Docket No. 7586], Defendant Robert A. Russell executed a promissory note in favor of the
 7 USACM Trust in the original principal amount of \$20,000.00 on June 9, 2009. Payment of the
 8 promissory note was due in full by June 20, 2011. In the event of default, the USACM Trust was
 9 authorized to obtain entry of the Stipulated Judgment executed by Robert A. Russell. Under the
 10 terms of the Settlement Agreement, the Stipulated Judgment would only be against Robert A.
 11 Russell.

12 Specifically the Settlement Agreement states:

13 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also
 14 consent to a stipulation of judgment (in the form attached hereto as Exhibit B) against
 15 Robert A. Russell in the amount of \$25,000 in favor the USACM Trust (“Stipulation of
 16 Judgment”).

17 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also
 18 consent to a stipulation of judgment against Robert A. Russell in the amount of \$25,000 in
 19 favor the USACM Trust (“Stipulation of Judgment”). Counsel for the USACM Trust, the
 law firm of Diamond McCarthy, LLP shall hold the Stipulation of Judgment without filing
 it.

20 If the Promissory Note is paid in full within 2 years of its execution, Counsel for the
 21 USACM Trust shall return the Stipulation of Judgment to counsel for Robert A. Russell,
 22 Scott McGath. If the Promissory Note is not paid in full within 2 years of its execution,
 the Stipulation of Judgment shall be filed and execution shall issue upon the Judgment.

23 Additionally the USACM Trust’s 9019 Motion to approve the Settlement Agreement
 24 stated:

25 On or before the Effective Date of this Agreement, Robert A. Russell shall execute a
 26 promissory note payable to the USACM Trust in the amount of \$20,000 (the “Promissory
 Note”). The Promissory Note shall be a two-year, non-interest-bearing note. Robert A.
 Russell shall be the only obligor on the Promissory Note.

1 In conjunction with the execution of the Promissory Note, Robert A. Russell shall also
 2 consent to a stipulation of judgment against Robert A. Russell in the amount of \$25,000 in
 3 favor the USACM Trust ("Stipulation of Judgment"). Counsel for the USACM Trust, the
 4 law firm of Diamond McCarthy, LLP, shall hold the Stipulation of Judgment without
 5 filing it.

6 If the Promissory Note is paid in full within 2 years of its execution, Counsel for the
 7 USACM Trust shall return the Stipulation of Judgment to counsel for Robert A. Russell,
 8 Scott McGath. If the Promissory Note is not paid in full within 2 years of its execution,
 9 the Stipulation of Judgment shall be filed and execution shall issue upon the Judgment.

10 Defendant Robert A. Russell defaulted on the terms of the Settlement Agreement and the
 11 Promissory Note; therefore, on July 13, 2011, the USACM Trust filed the Declaration of Jacob J.
 12 Roberts and uploaded the Stipulated Judgment for entry by the Court.

13 Under the terms of the Settlement Agreement, counsel for the USACM Trust intends to
 14 file a Stipulated Dismissal for Deborah Russell, Russell AD Development Group, LLC, Copper
 15 Sage Commerce Center LLC, Freeway 101 USA Investors, LLC, Boise/Gowen 93, LLC, Der NV
 16 Invesco, LLC, FW 101 Loop RAR Investment, LLC, BG/93 Investments, LLC, and SVRB
 17 Investments, LLC.

Adversary No. 08-1124 – USACM Liquidating Trust v. Homes for America

18 During the Status Hearings, the Court stated that the Agreed Judgment approved by the
 19 Court on June 30, 2011 [Docket No. 54] related to all but one of the named Defendants, One
 20 Point Street, Inc. ("One Point Street") and inquired as to the status of proceeding against One
 21 Point Street.

22 Under the terms of the Settlement Agreement approved by the Court on September 15,
 23 2009 [Docket No. 7485], One Point Street was specifically excluded from the \$2.8 million
 24 Agreed Judgment.

25 Specifically the Settlement Agreement states:

26 Defendants HFAH, Clear Lake, and Mediterranee (collectively the "Responsible
 27 Defendants") shall deliver to the USACM Trust a fully executed Agreed Judgment in the
 28 amount of Two Million Eight Hundred Thousand Dollars (\$2,800,000) substantially in the

1 form as that attached hereto as Exhibit A, (the “Agreed Judgment”). Defendant OPSI
2 shall have no liability to USACM Trust.

3 Additionally the USACM Trust’s 9019 Motion to approve the Settlement Agreement
stated:

4 The Responsible Defendants² will execute Agreed Judgments in a joint and several
5 amount of \$2,800,000.00 (the “Agreed Judgments”) which will be held in escrow as
described below.

6 Under the terms of the Settlement Agreement, counsel for the USACM Trust intends to
7 file a Stipulated Dismissal of One Point Street from this adversary.

9 Dated: August 4, 2011

10 **DIAMOND MCCARTHY LLP**

12 By: /s/ Stephen T. Loden
13 Stephen T. Loden TX 24002489 (pro hac vice)
Jacob J. Roberts TX 24065982 (pro hac vice)
909 Fannin, Suite 1500
Houston, Texas 77010
(713) 333-5100 (telephone)
(713) 333-5199 (facsimile)
16 *Special Litigation Counsel for*
USACM Liquidating Trust

11 **LEWIS AND ROCA LLP**

12 By: /s/ Rob Charles
13 Rob Charles, NV 6593
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8320 (telephone)
(702) 949-8321 (facsimile)

16 *Counsel for USACM Liquidating Trust*

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19 ² The Responsible Defendants are HFAH, Clear Lake, and Mediterraneo.
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1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that the foregoing was electronically filed on August 4, 2011, and
4 served by the Court's CM/ECF service to all parties registered to receive electronic
5 notice in this case.

6

/s/ Jacob J. Roberts

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